



E-Filed on 2/19/09

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## UNITED STATES BANKRUPTCY COURT

### DISTRICT OF NEVADA

9 In re:

10 USA COMMERCIAL MORTGAGE  
 COMPANY,

11 USA CAPITAL REALTY ADVISORS,  
 12 LLC,<sup>1</sup>

13 USA CAPITAL DIVERSIFIED TRUST  
 14 DEED FUND, LLC,

15 USA CAPITAL FIRST TRUST DEED  
 16 FUND, LLC,<sup>2</sup>

17 USA SECURITIES, LLC,<sup>3</sup> Debtors.

18 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR  
 Case No. BK-S-06-10726-LBR<sup>1</sup>  
 Case No. BK-S-06-10727-LBR<sup>2</sup>  
 Case No. BK-S-06-10728-LBR<sup>2</sup>  
 Case No. BK-S-06-10729-LBR<sup>3</sup>

### CHAPTER 11

Jointly Administered Under Case No.  
 BK-S-06-10725 LBR

### JOINT DISCOVERY PLAN FOR OBJECTION TO ALLOWANCE OF CLAIM NO. 792 FILED BY COPPER SAGE COMMERCIAL CENTER, LLC

Date of Hearing: February 20, 2009

Time of Hearing: 9:30 a.m.

25 <sup>1</sup> This bankruptcy case was closed on September 23, 2008.

26 <sup>2</sup> This bankruptcy case was closed on October 12, 2007.

<sup>3</sup> This bankruptcy case was closed on December 21, 2007.



Pending before the Court is the USACM Liquidating Trust's (the "USACM Trust") objection to allowance of Proof of Claim No. 792 filed by Copper Sage Commercial Center, LLC ("Copper Sage") [DE 3077]. At the scheduling conference set for February 20, 2009, the parties request that the Court enter a discovery plan and scheduling order as set forth below. The parties have agreed on all issues.

**1. Discovery Plan:**

A discovery plan is needed or useful in this case. The parties jointly propose to the court the attached discovery plan and scheduling order included below under Paragraph 8.

**2. Nature of The Case:**

Copper Sage has asserted a claim in the amount of \$3.5 million against USA Commercial Mortgage Company ("USACM") for breach of contract. The Copper Sage Direct Lenders funded the initial loan to Copper Sage in the amount of \$3,550,000 and Copper Sages asserts that USACM agreed to loan up to \$11,300,000 to Copper Sage. Copper Sage alleges that USACM breached its agreement with Copper Sage by failing to advance additional loan funds to Copper Sage beyond the initial principal amount of \$3,550,000.

The USACM Trust filed an Objection [DE 3077] to the Copper Sage claim on November 9, 2007. The Objection disputes each theory asserted in the Copper Sage Claim on factual and/or legal grounds and disputes the Copper Sage claimed damages. The Objection also asserts several affirmative defenses.

**3. Jury Trials:**

A demand for a jury trial has not been made.

**4. Additional Pleadings:**

Are there any counterclaims, cross claims or amendments to the pleadings expected to be filed?

No.



1       **5. Settlement Conference:**

2           The parties would ask that the Court set a mediation date in late April/early May.

3       **6. Trial:**

4           The parties believe that this case will be ready for a bench trial by October 1, 2009,  
5 and that the trial will last for 2 days.

6       **7. All parties do consent to this Court entering final judgment.**

7       **8. Joint Report of Parties' Planning Meeting**

8       **A. Pursuant to Fed. R. Civ. P. 26(f), a Telephonic Meeting was Held on  
9 February 13, 2009 and was Attended by:**

10          • Susan Scann of Deaner, Deaner, Scann, Malan & Larsen for the claimant,  
11           Copper Sage.  
12          • John Hinderaker of Lewis and Roca, LLP for the USACM Liquidating  
13           Trust.

14       **B. Pre-discovery Disclosures.**

15           The parties will exchange the information required by Fed. R. Civ. P. 26(a)(1) by  
16 March 15, 2009.

17       **C. Discovery Plan.**

18           The parties jointly propose to the Court the following discovery plan:

19          • Discovery will be needed on the following subjects: The factual basis for  
20           each of Copper Sage claims against USACM; the factual basis for Copper  
21           Sage's alleged damages; and the factual basis any defenses to be asserted by  
22           the USACM Trust.  
23          • All discovery commenced in time to be completed by July 30, 2009.  
24          • Maximum of 25 interrogatories by each party to any other party. Responses  
25           due 20 days after service.



- 1      • Maximum of 50 requests for admission by each party to any other party.  
2              Responses due 20 days after service.
- 3      • Responses to requests for production of documents, electronically stored  
4              information and things will be due 20 days after service.
- 5      • Maximum of 5 depositions by Copper Sage and 5 by the USACM Trust.
- 6      • Each deposition limited to maximum of 4 hours unless extended by  
7              agreement of parties.
- 8      • Reports from retained experts under Rule 26(a)(2) due:  
9                  ○ from Copper Sage by May 1, 2009.  
10                 ○ from the USACM Trust by May 15, 2009.  
11                 ○ Supplementation under Rule 26(e) due May 29, 2009.
- 12     • The parties agree that the disclosure or discovery of electronically stored  
13              information should be handled as follows:

14       Disclosure and discovery of electronically stored information: The parties are to  
15       preserve all electronically stored information that is relevant to this lawsuit or reasonably  
16       likely to be subject to discovery. If and when a party requests electronically stored  
17       information, the parties shall confer regarding the manner in which the producing party  
18       will disclose such information to the requesting party. If, after conferring, the parties  
19       cannot agree on the manner in which to disclose such information, the requesting party  
20       shall file a discovery motion.

21       **D. Other Items.**

- 22      • The parties request a pretrial conference in Late August/Early September  
23                 2009.
- 24      • The parties should be allowed until May 1, 2009 to join additional parties  
25                 and to amend the pleadings.
- 26      • All potentially dispositive motions should be filed by July 15, 2009.



- 1      • The parties will again evaluate settlement on June 30, 2009.
- 2      • Final lists of witnesses and exhibits under Rule 26(a)(3) should be due from
- 3                  Los Valles by September 1, 2009.
- 4      • Final lists of witnesses and exhibits under Rule 26(a)(3) should be due from
- 5                  USACM by September 8, 2009.
- 6      • Parties should have 7 days after service of final lists of witnesses and
- 7                  exhibits to list objections under Rule 26(a)(3).
- 8      • The case should be ready for a bench trial by October 1, 2009 and at this
- 9                  time trial is expected to take approximately 2 days.

10      Dated: February 19, 2009

11      **DEANER, DEANER, SCANN, MALAN    LEWIS AND ROCA LLP**  
12      & LARSEN

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